

2003 DRAFTING REQUEST

Bill

Received: 10/24/2003

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Peggy Krusick (608) 266-1733

By/Representing: Christian

This file may be shown to any legislator: NO

Drafter: mlief

May Contact:

Addl. Drafters:

Subject: Courts - garn/injunct

Extra Copies:

Submit via email: YES

Requester's email: Rep.Krusick@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Continuous garnishment of earnings

Instructions:

Have all garnishments continue until the debt and costs are paid in full

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 10/24/2003						Local
/1	mlief 10/27/2003	kgilfoy 11/24/2003	jfrantze 11/25/2003		sbasford 11/25/2003	Inorthro 01/28/2004	

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Page 2

FE Sent For:

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Page 2

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1/?	rnelson2 10/24/2003 mlief	1-11/24 KMG	11/25	11/25			

FE Sent For:

<END>



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3572/1

MJL

King

12/2 res

2003 B1

LPS: (3572/1)
(SEC. 6 and 7.)

please format the
text like the
attached pages.
Have me check. KG

Sen. Cat.

1 AN ACT *Sen. Cat.*; relating to: continuous garnishment of earnings.

Analysis by the Legislative Reference Bureau

Under current law, unless a garnishee is the state or a political subdivision of the state, a garnishment of earnings affects the debtor's earnings for all pay periods beginning within 13 weeks after the garnishment summons is served on the garnishee. The debtor and creditor may stipulate to successive 13-week extensions if no other creditors are attempting to garnish the debtor's earning and if the garnishee is paid an additional garnishee fee. If the garnishee is the state or a political subdivision, the garnishment stays in effect until the judgment is satisfied.

This bill provides that all garnishments of earnings stay in effect until the judgment is satisfied.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 812.33 of the statutes is amended to read:

3 812.33 Garnishee fee. The creditor shall pay a \$15 fee to the garnishee for
4 each earnings garnishment ~~or each stipulated extension of that earnings~~

BILL**SECTION 1**

1 ~~garnishment~~. This fee shall be included as a cost in the creditor's claim in the
2 earnings garnishment.

History: 1993 a. 80.

3 **SECTION 2.** 812.35 (5) of the statutes is amended to read:

4 812.35 (5) Upon being served, the garnishee shall determine whether the
5 garnishee may become obligated to the debtor for earnings earned within pay periods
6 beginning ~~within 13 weeks~~ after the date of service. If it is unlikely that the
7 garnishee will become so obligated, the garnishee shall send a statement of that fact
8 to the creditor by the end of the 7th business day after receiving the earnings
9 garnishment form under sub. (3). The creditor shall send a copy of this statement
10 to the court within 7 business days after receipt of the statement.

History: 1993 a. 80.

11 **SECTION 3.** 812.35 (6) of the statutes is amended to read:

12 812.35 (6) If the garnishee may become obligated to the debtor for earnings
13 earned within pay periods beginning ~~within 13 weeks~~ after the date of service, but
14 one or more earnings garnishments against the debtor have already been served on
15 the garnishee and not terminated, the garnishee shall retain the earnings
16 garnishment form and place the garnishment into effect the pay period after the last
17 of any prior earnings garnishments terminates. The garnishee shall notify the
18 debtor of the amount of the garnishment and shall notify the creditor of the amount
19 owed on the pending garnishments by the end of the 7th business day after receipt
20 of the garnishment form under sub. (3). If, before the earnings garnishment takes
21 effect, the garnishee determines that it is unlikely that the garnishee will continue
22 to be obligated to the debtor for earnings, the garnishee shall notify the creditor and
23 court under sub. (5) within 7 business days after making that determination.

History: 1993 a. 80.

24 **SECTION 4.** 812.40 of the statutes is repealed. ✓

BILL

SECTION 5

1 SECTION 5. 812.42 (2) (b) of the statutes is repealed. (form)

2 SECTION 6. 812.44 (3) of the statutes is amended to read:

3 (form) 812.44 (3) ~~The earnings garnishment form~~ issued by the clerk under s. 812.35

4 ~~(2) shall be in substantially the following form:~~

5 STATE OF WISCONSIN

6 CIRCUIT COURT:.... County

7
8 A.B., Creditor

9 vs.

File or Reference Number....

10 C.D., Debtor

EARNINGS

11 and

GARNISHMENT

12 E.F., Garnishee

13
14 THE STATE OF WISCONSIN, To the garnishee:

15 The creditor has been awarded a court judgment that has not been paid. As a
16 result, the creditor claims that a total of \$.... is owed by the debtor, as follows:

17 A. Unpaid balance on judgment \$....

18 B. Unpaid postjudgment interest \$....

19 C. Costs of this earnings garnishment

20 (estimated) \$....

21 TOTAL \$....

22 The creditor believes that you will owe the debtor for earnings ~~within the next~~
23 ~~13 weeks~~. If the \$15 fee is tendered with these papers, you are directed by the court
24 to do the following:

25 DETERMINE WHETHER YOU WILL

CLPS: Format forms like attached pages.

BILL**SECTION 6***plain space***OWE THE DEBTOR EARNINGS**

1. Determine if you are likely to owe the debtor for earnings in pay periods beginning ~~within the next 13 weeks~~ after the date of service.

2. If you are not likely to owe the debtor for earnings in pay periods beginning ~~within the next 13 weeks~~ after the date of service, send a statement stating that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment forms.

IF THE DEBTOR SENDS YOU AN ANSWER

3. Whenever you receive a debtor's answer form from the debtor, mail a copy of the answer form to the creditor by the end of the 3rd business day after receipt of that form. Include the date you received the answer form on the copy sent to the creditor.

4. If the debtor's answer form claims a complete exemption or defense, do not withhold or pay to the creditor any part of the debtor's earnings under this garnishment unless you receive an order of the court directing you to do so.

MULTIPLE EARNINGS GARNISHMENTS

5. If the debtor's earnings are already being garnisheed when you receive this earnings garnishment, place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. If there are no prior pending earnings garnishments against the debtor's earnings, place this earnings garnishment into effect the pay period after you receive it.

**EARNINGS GARNISHMENTS LAST 13 WEEKS,
EXCEPT FOR PUBLIC EMPLOYEES**

BILL

SECTION 6

6. The garnishment of the earnings of employees of the state of Wisconsin and its political subdivisions remain remains in effect until the judgment is satisfied.

~~The garnishment of earnings of other employees will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnisheed. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.~~

PAYING THE CREDITOR

7. Between 5 and 10 business days after each payday of a pay period affected by this earnings garnishment, pay the creditor 20% of the debtor's disposable earnings for that pay period. Payment is complete upon mailing.

EFFECT OF COURT-ORDERED

ASSIGNMENTS FOR SUPPORT

8. If the debtor has assigned his or her earnings for support by court order, those support payments take priority over this earnings garnishment. If 25% or more of the debtor's disposable earnings is assigned for support by court order, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 25% of the debtor's earnings is assigned for support by court order, the amount the creditor must be paid is reduced so that the total of earnings assigned and garnisheed does not exceed 25% of the debtor's disposable earnings.

EXTENSIONS

BILL

SECTION 6

1 ~~9. The debtor and creditor may agree in writing to extend this earnings~~
2 ~~garnishment for additional pay periods beginning within 13 weeks after this~~
3 ~~earnings garnishment would otherwise terminate. If you receive a written extension~~
4 ~~stipulation, and an additional garnishee fee for each extension, you must honor it~~
5 ~~unless a different garnishment against this debtor's earnings is served upon you~~
6 ~~before the extension takes effect. In that case, the extension is void and you must~~
7 ~~return the extension fee to the party who paid it to you.~~

History: 1993 a. 80, 490; 1995 a. 27, 224; 1997 a. 35, 250, 291; 1999 a. 32; 2001 a. 38.

8 **SECTION 7. 812.44 (4)** of the statutes is amended to read:

9 ~~(form) 812.44 (4) The notice of exemption served upon the garnishee under s. 812.35~~

10 ~~(4) shall be in substantially the following form:~~

11 STATE OF WISCONSIN

12 CIRCUIT COURT:.... County

13 _____
14 A.B., Creditor

15 vs.

File or Reference Number....

16 C.D., Debtor

EXEMPTION NOTICE

17 and

EARNINGS GARNISHMENT

18 E.F., Garnishee

19 _____
20 To the debtor:

21 The creditor was awarded a judgment against you or your spouse by.... (County
22 Circuit or Federal District) Court on the.... day of...., (year) That judgment not
23 having been fully paid, the creditor has now filed a garnishment proceeding against
24 your earnings from the garnishee. This means that the creditor is seeking to take

BILL**SECTION 7**

1 some of your earnings to satisfy part or all of the judgment against you or your
2 spouse.

3 The total amount of the creditor's claim is as follows:

4 Unpaid balance on judgment

\$....

5 Unpaid postjudgment interest

\$....

6 Costs:

7 a. Garnishment filing fee

\$....

8 b. Garnishee fee

\$....

9 c. Service of process (estimate)

\$....

10 TOTAL

\$....

11 By law, you are entitled to an exemption of not less than 80% of your disposable
12 earnings. Your "disposable earnings" are those remaining after social security and
13 federal and state income taxes are withheld.

14 Your earnings are completely exempt from garnishment if:

15 1. Your household income is below the federal poverty level, or this
16 garnishment would cause that to happen. See the enclosed schedules and worksheet
17 to determine if you qualify for this exemption.

18 2. You receive aid to families with dependent children, relief funded by a relief
19 block grant under ch. 49, relief provided by counties under section s. 59.53 (21) of the

BILL

SECTION 7

1 Wisconsin Statutes, medical assistance, supplemental security income, food stamps,
2 or veterans benefits based on need under 38 USC 501 to 562 or section 45.351 (1) of
3 the Wisconsin Statutes, or have received these benefits within the past 6 months.

4 3. At least 25% of your disposable earnings are assigned by court order for
5 support.

6 If you qualify for a complete exemption, you must give or mail a copy of the
7 enclosed debtor's answer form to the garnishee in order to receive that increased
8 exemption.

9 If your circumstances change while the garnishment is in effect, you may file
10 a new answer at any time.

11 If you do not qualify for a complete exemption, but you will not be able to acquire
12 the necessities of life for yourself and your dependents if your earnings are reduced
13 by this earnings garnishment, you may ask the court in which this earnings
14 garnishment was filed to increase your exemption or grant you other relief.

15 IF YOU NEED ASSISTANCE

16 CONSULT AN ATTORNEY

17 If you have earnings that are being garnisheed that are exempt or subject to a
18 defense, the sooner you file your answer or seek relief from the court, the sooner such
19 relief can be provided. This earnings garnishment affects your earnings in pay
20 periods beginning ~~within 13 weeks~~ after it was served on the garnishee and remains
21 in effect until the judgment is satisfied. ~~You may agree in writing with the creditor~~
22 ~~to extend it for additional 13 week periods until the debt is paid.~~

23 PENALTIES

make
plain

BILL

SECTION 7

1 If you wrongly claim an exemption or defense in bad faith, or if the creditor
2 wrongly objects to your claim in bad faith, the court may order the person who acted
3 in bad faith to pay court costs, actual damages and reasonable attorney fees.

History: 1993 a. 80, 490; 1995 a. 27, 224; 1997 a. 35, 250, 291; 1999 a. 32; 2001 a. 38.

SECTION 8. Initial applicability.

5 (1) This act first applies to garnishment actions filed on the effective date of this
6 subsection.

7 (END)

Northrop, Lori

From: Moran, Christian
Sent: Wednesday, January 28, 2004 11:51 AM
To: LRB.Legal
Subject: Draft review: LRB 03-3572/1 Topic: Continuous garnishment of earnings

It has been requested by <Moran, Christian> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3572/1 Topic: Continuous garnishment of earnings